IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

CRP.No. 3266 of 2001()

(AGAINST THE JUDGMENT DATED 2/07/2001 PASSED IN RCA.26/1996 ON THE FILE OF THE RENT CONTROL APPELLATE AUTHORITY, N.PARUR, WHICH ARISES FROM THE ORDER PASSED IN RCP.2/1995 ON THE FILE OF THE RENT CONTROL COURT, N.PARUR)
.....

PETITIONER: APPELLANT:1ST PETITIONER:

KOCHU THRESSIA, D/O.JOSEPH, THEKKENATH, OLANAD KARA, ALANGAD VILLAGE, PARUR TALUK, (W/O.T.M.JOHN, SANTHI NIVAS, STATION ROAD, KOTTAC NAGAR, ORISSA, REPRESENTED BY HER POWER OF ATTORNEY HOLDER, T.M.JOHN, SANTHI NIVAS, STATION ROAD, KOTTAC NAGAR, ORISSA)

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

RESPONDENTS: RESPONDENTS 1 TO 4/PETITIONERS 2 TO 5:
----

1. ALBERT, S/O.THOMMAN, BHAVEELI, CHIRAKKAKAM KARA, VARAPUZHA VILLAGE.

***2. M.V.THANKAMANY ACHARI, MALIYEKKAL, PUTHENPURACKAL, THIRUMUPPATHU, OLANAD KARA, ALANGAD VILLAGE, PARUR TALUK (D E L E T E D).**

***R2 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DTD. 9/11/2005 IN I.A.2937/05.**

..2/-

3. C.J. SILVASTER, S/O.JOSEPH, CHULLIKKAD VEEDU, KAITHARAM KARA, KOTTUVALLY VILLAGE, PARUR TALUK.

4. ARAVINDHAN, S/O.KOCHUNNI @ KUNJUNNI, PADATHYPARAMBIL, PUTHENPALLIKKARA, VARAPUZHA VILLAGE.

5. BABY, W/O. JOSEPH, THEKKENATH, OLANAD KARA, ALANGAD VILLAGE.

6. LILLY, D/O.JOSEPH, THEKKENATH, OLANAD KARA, ALANGAD VILLAGE.

7. SANTHA, D/O.JOSEPH, THEKKENATH, OLANAD KARA, ALANGAD VILLAGE.

8. JOSEPHEENA, D/O.JOSEPH, THEKKENATH, OLANAD KARA, ALANGAD VILLAGE.

BY ADV. SRI.P.R.VENKITESH for R3 & R4
SRI.SHIBU JOSEPH for R5, R7 & R8
SRI.AJU MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007 ALONG WITH C.R.P.NO.3240 OF 2001, C.R.P.NO. 3455 OF 2001 AND C.R.P.NO.3453 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

C.R.P.Nos.3266, 3240, 3453 & 3455 of 2001

Dated, this the 7th day of August, 2007

ORDER

Harun-Ul-Rashid, J.

Common issues arise for consideration in all the above four Civil Revision Petitions. The parties before us are referred to herein as landlords and tenants respectively.

2. These four revisions arise from Rent Control Petition Nos.1/1995 and 2/1995 on the files of the Rent Control Court, North Parur. Two Rent Control Petitions are filed by the landlords under sec.11(2)(b), 11(3), 11(4)(i) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act). R.C.P.No.1/1995 relates to the eviction of Room No.784 and RCP No.2/1995 relates to the eviction of Room Nos.785, 786 and 787.

3. The 1st counter petitioner in RCP 1/1995 is the tenant and the 2nd counter petitioner is the sub-tenant. Similarly, in RCP 2/1995, 1st counter petitioner is the tenant and counter petitioners 2 to 4 are the sub-tenants.

4. The petition schedule room in RCP 1/1995 was rented out to the tenant on 7.10.1963 for a monthly rent of Rs.13/- and the petition schedule building in RCP 2/1995 was rented out to the tenant on 15.7.1957 on a monthly rent of Rs. 20/- as per the rental arrangement between the parties. The landlords filed the above said respective petitions for eviction for the bona fide need of the son of

the first petitioner who is her dependent. The dependent son was a final year MBBS student in St. Johns Medical College, Bangalore at the time of filing the Rent Control Petitions. The bona fide requirement alleged is that he intends to start a clinic in the petition schedule building. The further averments in the Rent Control Petition is that the respective tenants had agreed that the premises will not be sublet or put in possession to any third parties, that the counter petitioner will not make any material alteration to the petition schedule building or do anything to reduce its value and utility materially and permanently. According to the landlord, the tenants without the consent and knowledge of the landlord has sublet the petition schedule building to the sub-lessees, that the respective tenants committed default of payment of rent and that the tenant uses the building in such a manner as to destroy its value and utility materially and permanently. The Rent Control Petitions were resisted by the tenants and subtenants denying the averments in the Rent Control Petitions. The landlord also alleged that a portion of the petition schedule building is in a dilapidated condition and is in a collapsible stage resulting in extensive damage caused to the building. Therefore suit notices are issued demanding vacant possession of the building. Since the buildings are not vacated by the tenants, the petitions for eviction were filed under sec 11(2)(b), 11(3), 11(4)(i) and 11(4)(ii) of the Act. The tenant in RCP 1/1995 remained ex parte. The counter petitioners in their objection admitted the rental arrangements between the landlord

and the tenant.

5. The sub tenant in RCP 1/1995 admitted the rental arrangement of 1963 between the landlord and the tenant and contended that the arrangement continued only for 5 years and after 5 years the tenant vacated and thereafter the premises was occupied by the second counter petitioner under the rental arrangements between the landlord and the second counter petitioner. The second respondent further contended that he is conducting a ration shop for the last 25 years, that the landlord is receiving rent from him and that from 1980 onwards the license to run the ration shop was changed in the name of the counter petitioner. Therefore he contended that the case of the landlord that the second counter petitioner is a sub tenant under the first respondent is without any basis. He had further contended that the bona fide need alleged by the landlord is a pretext for eviction, that the building is very old and due to lack of maintenance and repairs the petition schedule building is in a dilapidated condition and that there was no negligence on his part as alleged in the Rent Control Petition. He also contended that the rent upto June 1988 was paid and that from July 1988 to August 1988 the same was deposited.

6. The respondents in RCP 2/1995 had also raised similar contentions in their objections. The second counter petitioner contended that the tenant had surrendered vacant possession of the building in the year 1961, that subsequent to 1961 brother of the first counter petitioner

was put in possession of the petition schedule building and a portion of the petition schedule building happened to be let out to the second counter petitioner with the knowledge and consent of the landlord. He also contended that the bona fide need alleged is not true, that he has not used the building in such a way so as to reduce its value or utility and therefore the Rent Control Petitions are liable to be dismissed. The counter petitioners 3 and 4 also raised similar objections. According to the 3rd counter petitioner he is occupying room No.786 from 1980 onwards on a monthly rent of Rs.15/- and he is conducting a watch repairing shop in the said room. According to the 4th counter petitioner, he is occupying room No.787 from 1984 onwards and he is doing business in cycle spare parts on a monthly rent of Rs.30/-. According to the counter petitioners 3 and 4, room Nos.786 and 787 are rented out to them by the landlord.

7. In R.C.P. No.2/1995, according to the landlord, there were only two rooms at the time of the rental arrangement with the tenant. The tenant without the knowledge and consent of the landlord sublet one room to the 2nd counter petitioner, divided the second room into two and sublet the same to the counter petitioners 3 and 4. The Rent Control Court held a joint trial of R.C.P.Nos.1 and 2 of 1995 treating R.C.P.No.1/1995 as the main case and evidence was recorded. The Rent Control Court on appreciation of the facts, circumstances and documentary evidence adduced by both sides, entered findings that the counter petitioners are

liable to be evicted on the grounds of arrears of rent and dismissed the Rent Control Petition on all other grounds.

8. Aggrieved by the order of the Rent Control Court, the landlord filed RCA No.25/1996 against RCP No.1/1995 and RCA No.26/1996 against RCP No.2/1995 challenging the findings declining eviction under sec.11(3), 11(4)(i) and 11(4)(ii) of the Act. The Appellate Authority, on examination of the facts and circumstances, interfered with the findings under sec.11(4)(i) of the Act and dismissed the landlord's appeal claiming eviction under sec.11(3) and 11(4)(ii) of the Act. R.C.Rev.Nos.3453/2001 and 3455/2001 are filed by the counter petitioners in R.C.P.1/1995 and R.C.P.2/1995 against RCA Nos.25/1996 and 26/1996 respectively being aggrieved by the order granting eviction under sec.11(4)(i) of the Act. The landlord has come up in revision before this court by filing RCR Nos.3240/2001 and 3266/2001 challenging the finding declining eviction under sec.11(3) and 11(4)(ii) of the Act. Mainly the contest between the parties is in relation to the order passed under sec.11(4)(i) of the Act which is the subject matter of R.C.Rev.3453 and 3455 of 2001. The tenant has contended that the order passed by the Appellate Authority in reversal of the order of the Rent Control Court is unsustainable and therefore interference under sec.20 of the Act is warranted.

9. The revision petitioner in R.C.P.3453/2001 and 3455/2001 contended that the documentary evidence produced before the Rent

Control Court will prove that the landlord had independently made tenancy arrangements with the 2nd respondent in RCP 1/1995 and respondents 2 to 4 in RCP 2/1995 and therefore the ground of eviction based on sub-tenancy cannot stand. The learned counsel argued on the basis of Exts.B5 to B9 that the said counter petitioners are in occupation of the petition schedule rooms from the respective dates stated in their objections. The Appellate Authority examined all the documentary and oral evidence produced by both sides and entered into the finding that there is no evidence to show that the respective tenants had surrendered the tenancies to the counter petitioners or that any direct lease as claimed by the alleged sub-lessees was granted in their favour, nor is there any acquiescence on the part of the landlords.

10. The Appellate Authority on the basis of materials found that there is no documentary evidence to prove the alleged direct lease set up by the respondents in the respective rent control applications and on materials, the Appellate Authority also came to the conclusion that the 1st petitioner in the rent control petitions is permanently staying at Cuttack in Orissa in connection with his employment. Therefore PW.2, though invested with the responsibility to manage and look after the petition schedule room, had no idea about it and it is nobody's case that he is receiving the rent. The tenants had not adduced any evidence to show their actual occupation of the rooms on the respective dates pleaded. The

only fact established is that the original tenants had vacated the premises and the premises are occupied by the sub-tenants for a long period of time.

11. The Rent Control Appellate Authority examined Exts.A1 to A11 and Exts.B1 to B9 produced by the parties and also the oral evidence adduced by the parties and witnesses. The appellate Authority takes note of the fact that the appellants did not produce any documentary evidence to prove the alleged direct lease. The Appellate Authority also noticed the fact that PW.1 married the 1st petitioner in the year 1971 and was permanently staying at Cuttack in Orissa in connection with his employment and immediately after his examination in the court below he had returned to Cuttack. In such circumstances though he was invested with the responsibility to manage and look after the petition schedule rooms, the fact remains that he was away at Cuttack for all these years. The Appellate Court also found on evidence and circumstances, that the evidence tendered by RWs.1 and 3 regarding the payment of rent is not true. The Appellate Authority also rejected the argument of counter petitioners 3 and 4 in R.C.P.No.2/1995 that their occupation of the respective rooms indicate that even the local authority had acknowledged them as the tenants of the said rooms. The Appellate Authority did not accept this argument and found that there is no material on record to show that the local authority included the names of counter petitioners 3 and 4

as occupants of the rooms on the date of any document showing the rental arrangement with the landlord or on the basis of any information supplied by the landlord. The Appellate Authority also reasonably observed that the information regarding the occupancy must have been given by the occupant to the local authority which is not binding on the landlord. The Appellate Authority also came to the conclusion that the mere fact as seen from Exts.B2 to B9, the counter petitioners 3 and 4 in R.C.P.No.2/1995 were in occupation from 1980 onwards is not sufficient to hold that either there is direct lease in their favour or sublease in their favour by acquiescence of the landlords.

12. The 2nd petitioner in the Rent Control Petition was aged 74 years when he was examined in the Rent Control Court and on account of old age and for other reasons she was examined by a commissioner. The Appellate Court on an examination of the evidence of this old lady, observed that she was not dealing with the tenants of the petition schedule rooms and that everything was entrusted to PW.1 who himself was permanently staying in Cuttack in connection with his employment and further observed that one could imagine the kind of supervision either the landlady or her husband had and could have in respect of petition schedule rooms. The Appellate Authority also on an analysis of the facts and circumstances stated that counter petitioners 3 and 4 in R.C.P.No.2/1995 have been conducting a watch repairing shop/ration shop

in the respective rooms in their possession since long and further held that the mere fact that the 2nd counter petitioner in R.C.P.No.1/1995 and counter petitioners 3 and 4 in R.C.P.No.2/1995 were in occupation of the respective rooms for a long period in the circumstances stated above, that the petitions for eviction were filed only in 1988 and 1989 but dismissed for default and the present petitions are filed only in the year 1995 cannot lead to any acquiescence in favour of the subleasing.

13. A reading of sec.11(4)(i) makes it clear that if the tenant transfers his right under the lease without the consent of the landlord or sublet the building or any portion thereof, if the lease does not confer on him any right to do so, the landlord can seek eviction. The said provision plainly means that the consent of the landlord is required if the lease does not confer on the tenant any right to do so in order to escape the consequences envisaged by that provision. It is also trite law that mere knowledge of the landlord about the occupation of the tenanted premises by strangers other than the tenant will not create sub tenancy unless induction of the subtenant is made with the consent of the landlord. The time factor in filing the Rent Control Petition as such is not fatal to the relief of eviction claimed under sec. 11(4)(i) of the Act. The long occupancy of the tenanted premises by the sub-lessees alone will not lead to the conclusion that the sub-lessees acquire a right to continue in the tenanted premises. The Rent Control Statute does not recognise the claims set up

by the subtenants that their mere long occupation of the tenanted premises will lead to acquiescence or implied consent on the part of the landlord. Even in cases where the subtenants are in long occupation of the tenanted premises will not create tenancy which will bind the landlord. The situation is further worse in this case where the finding is that the arrangement of the tenants with the subtenants are without the knowledge or consent of the landlord and that it took long years for the landlord to realise that the subtenants are in occupation for years together. On a reading of sec.11(4)(i), proposition of implied consent or acquiescence would not be acceptable for the reason that the premises is occupied by strangers for long periods. The inaction of the landlord in not taking steps for evicting the subtenants within a reasonable period does not necessarily lead to an inference of implied consent or acquiescence. Even the knowledge of the landlord that the premises was in occupation of the subtenants would not lead to any implied inference or consent of sublease in favour of subtenants. In this connection we may refer to Words and Phrases Legally Defined Vol. I Third Edn. page 27 where we may first see what has been said about acquiescence. It is as follows:

> "Mere inactivity on the part of the defendant is not to be construed as acquiescence in delay by the plaintiff "sleeping dogs, in the form of sleeping plaintiffs, need not be aroused by defendants from their slumbers" (per Roskil L.J. in *Compagnie Francaise de Television*

> *v. Thorn Consumer Electronics Ltd.* (1978) RCP 735 at 739)); *Bremer Vulkan Schiffbau and Maschinenfabrik v. South India Shipping Corporation* (1979) 3 All ER 194 at 198, per Donaldson, J."

By a unilateral action of the tenant of surrendering his right of tenancy in favour of a third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may legally bind the landlord. The Rent Act is a special statute governing and regulating tenancy and sub-tenancy. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy. Mere knowledge of the landlord about occupation of the tenanted premises by the said subtenants will not create a sub-tenancy unless induction of a sub-tenant is made with the written consent of the landlord.

14. The circumstances and facts put forward by the subtenants to prove the case of tenancy in their favour was negatived by the Appellate Authority for valid and sustainable reasons. Referring to the scope of sec.11(4)(i) of the Act, it has been held by the Division Bench of this Court in *Raghavan v. Sreedhara Panicker - 2001 (1) KLT 722* that the tenant is liable to be evicted, if after the commencement of the Act, the tenant, without the consent of the landlord transfers his right under the lease or sublets the entire building or any portion thereof, if the lease does not confer on him the right to do so. This position was affirmed by the decision

in *Mohammed Sageer v. Prakash Thomas -2005(2) KLT 400.* It is stated therein that the two circumstances in which subletting by a tenant lead to an order for eviction under sec.11(4)(i) of the Act are the circumstances where the lease or the instrument of lease confers on him no right to do so and where subletting is made without the consent of the landlord. In this case, these two conditions are not satisfied. We find that both sides have no case that the lease or instrument of lease confers on the tenant a right to sublet the premises. Nor was it made out that the sub letting was done with the prior consent of the landlord. In the dictum laid down in *Mohammed Sageer*'s case (supra) it is held that the mere knowledge of the landlord about the accommodation of the tenanted premises by the sublessee will not create a sub tenancy which is binding on the landlord and that on establishing that the tenant has transferred the exclusive possession to another person, the court may legitimately draw a presumption under sec.114 of the Evidence Act that the transfer was for valuable consideration so as to shift the burden of proof to the tenant to disprove the prima facie case of subletting established by the landlord. It was also observed that the terms and conditions under which the sub tenant has occupied the premises may be unknown to the landlord and known only to the tenant and the subtenant. Therefore, if the landlord has to prove positively by adducing evidence that the transfer of possession was for valuable consideration, it may not be possible to prove subletting in

any case except in rarest of rare cases. Going by the dictum stated above, the landlord has put in sufficient proof and circumstances establishing a strong case of subletting which was not disproved by any positive evidence adduced by the tenant. The burden is on the tenant and the subtenant to prove that their occupation is not on the basis of any arrangement, which is prohibited under sec.11(4)(i) of the Act.

15. Going by the facts and circumstances of the case, we are not inclined to accept the defence set up by the tenants or the subtenants to defeat the order of eviction under sec.11(4)(i) of the Act. We are of the considered view that the tenants of the respective premises sublet the premises without the knowledge or consent of the landlord and, therefore, they are liable to be evicted under sec.11(4)(i) of the Act. We see no irregularity, illegality or impropriety in the order passed by the Appellate Authority in allowing eviction under sec.11(4)(i) of the Act.

16. In the light of the aforesaid discussions and findings, the views taken by the authorities below do not suffer from any illegality and therefore CRP Nos. 3453 and 3455 of 2001 are dismissed. No order as to costs.

CRP Nos.3266 and 3240 of 2001.

17. These two revision petitions are filed by the landlord aggrieved by the refusal of prayer for eviction under sec. 11(3) and 11(4)(ii) of the

Kerala Buildings (Lease and Rent Control) Act. The concurrent findings of fact entered by the authorities below are under challenge in these two revision petitions. While testing the bona fides set up by the landlord the appellate court entered the finding that the evidence tendered by PW's 1 and 2 were not acceptable regarding the requirement of the son of the landlord. Both the authorities below had taken note of the situation that the son of the first petitioner has not been examined to state about the alleged need. The Appellate Court also noticed the fact that in the facts and circumstances of the case at hand it is absolutely necessary to examine the son of the first petitioner to speak about the alleged need and requirement. We have examined the pleadings and the materials on record. We noticed that the proof adduced on the basis of the pleadings is not sufficient in aid of the bona fide requirement alleged and therefore the findings recorded by the authorities below did not suffer from any illegality, impropriety or irregularity warranting interference under sec. 20 of the Act.

18. What remains for consideration is whether the landlord established the ground under sec. 11(4)(ii). This question was also examined by the authorities below in detail. The authorities below noticed the fact that PW's 1 and 2 have conceded that they had not effected the repairs and maintenance of the two rooms for long, the reasons being that they were not getting the rent. The Ext. A8 states that the roof was leaking

and that the rain water was falling into the room. The authorities below also concluded that due to the possibility of causing some damage to the lean-to portion, it may collapse due to the oldness and lack of repair also cannot be ruled out. Therefore the authorities below entered the finding that the landlord cannot take advantage of their inaction in effecting the repairs and maintenance and seek eviction of the counter petitioners under sec. 11(4)(ii).

19. In the light of the aforesaid discussions and findings, the views taken by the authorities below do not suffer from any illegality and therefore CRP Nos.3266 and 3240 of 2001 are dismissed. No order as to costs.

20. Learned counsel for the petitioners in CRP 3453/2001 and 3455/2001 requested for time to vacate the premises for making alternative arrangements. The request was put to the learned counsel for the landlord also. Having regard to the fair stand of the learned counsel for the landlord, six months' time is granted to the occupants of the respective premises in both the cases on condition that the occupants shall file affidavits before the Rent Control Court undertaking to vacate the premises within six months and on condition that the occupants of the respective petition schedule rooms shall pay rent for use and occupation from the date of their respective occupation as stated in their objection till the date of vacating the premises at the rate at which rent was paid by the original

tenant. The undertaking in the form of an affidavit shall be filed within one month from today.

The Civil Revision Petitions are disposed of as above.

K. BALAKRISHNAN NAIR, JUDGE

HARUN-UL-RASHID, JUDGE.

mt/-

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

CRP 3266, 3240,3453 &
3455/2001

ORDER

7.8.2007